

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
(2) OSAGE MINERALS COUNCIL,) Case No. 14-CV-704-GKF-JFJ
)
)
Intervenor-Plaintiff,)
)
)
v.)
)
(1) OSAGE WIND, LLC;)
(2) ENEL KANSAS, LLC; and)
(3) ENEL GREEN POWER)
NORTH AMERICA, INC.,)
)
Defendants.)

**INTERVENOR-PLAINTIFF OSAGE MINERALS COUNCIL'S
MOTION FOR SUMMARY JUDGMENT**

Intervenor-Plaintiff, the Osage Minerals Council ("OMC"), moves for summary judgment in its favor pursuant to Fed. R. Civ. P. 56. As more fully set forth below, summary judgment is sought for Counts I, II, III, and IV of the OMC's First Amended Complaint. Dkt. 164. Additionally, summary judgment is sought for the following: (1) judgment that Defendants Osage Wind, LLC, Enel Kansas, LLC, and Enel Green Power North America, Inc. are jointly and severally liable for their tortious trespass, continuing trespass, and unlawful mining of the Osage Mineral Estate; (2) judgment in favor of permanent equitable relief in the form of ejectment, or alternatively, if the Court deems permanent injunctive relief is not warranted, a determination that the proper calculation of monetary damages is contained in the expert report of Mr. Steven Hazel; (3) judgment finding Defendants did not reasonably rely on the advice of their legal counsel in good faith to mitigate damages, thereby dismissing Defendants' affirmative defense in ¶ 17 of Defendants' Answer to the OMC's First Amended Complaint, Dkt. 174; and

(4) judgment finding the OMC is entitled to attorney fees. Summary judgment is appropriate in this case because there are no genuine disputes as to any material fact. Therefore, the OMC is entitled to judgment as a matter of law. The OMC's brief in support of this motion, including the statement of undisputed facts, is attached herewith.

Respectfully submitted,

s/ Mary Kathryn Nagle

Mary Kathryn Nagle, OBA No. 33712

Wilson Pipestem, OBA No. 16877

Abi Fain, OBA No. 31370

Jennifer S. Baker, OBA No. 21938

Shoney Blake, Cal. Bar No. 264981

Pipestem and Nagle Law, P.C.

401 S. Boston Ave., #2200

Tulsa, Oklahoma 74103

918-936-4705 (Office)

mknagle@pipestemlaw.com

wkpipistem@pipestemlaw.com

afain@pipestemlaw.com

jbaker@pipestemlaw.com

sblake@pipestemlaw.com

Counsel for Intervenor-Plaintiff

Osage Minerals Council

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2021, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Ryan A. Ray
Joel L. Wohlgemuth
rar@nwcjlaw.com
jlw@nwcjlaw.com

-and-

Lynn H. Slade
Sarah S. Stevenson
Deana M. Bennett
Spencer L. Edelman
lynn.slade@modrall.com
sarah.stevenson@modrall.com
deana.bennett@modrall.com
spencer.edelman@modrall.com
Counsel for Defendants

-and-

Thomas J. McCormack
Robin D. Ball
Robert Comer
Robert Kirby thomas.mccormack@nortonrosefullbright.com
robin.ball@nortonrosefullbright.com bob.comer@nortonrosefullbright.com
robert.kirby@nortonrosefullbright.com
Counsel for Defendants

Cathryn Dawn McClanahan
cathy.mcclanahan@usdoj.gov
Counsel for Plaintiff, United States

David McCullough
dmccullough@dsda.com

Jeffrey S. Rasmussen
jrasmussen@ndnlaw.com

-and-

Wilson Pipestem
Mary Kathryn Nagle
Abi L. Fain
Jennifer S. Baker
Shoney Blake
mknagle@pipestemlaw.com
wkpipistem@pipestemlaw.com
afain@pipestemlaw.com
jbaker@pipestemlaw.com
sblake@pipestemlaw.com
*Counsel for Intervenor-Plaintiff,
Osage Minerals Council*

/s/ Mary Kathryn Nagle